

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

Timothy B. Smith,

Plaintiff,

v.

Kenan Transport, LLC, et al.

Defendants.

:  
:  
:  
:  
:  
:  
:  
:  
:  
:  
:

CIVIL ACTION NO.  
1:08-cv-01888-JOF

**OPINION & ORDER**

This matter is before the court on Concentra Health Services, Inc.’s Motion to Dismiss for Lack of Service of Process [25].

In a previous order, this court found that Concentra Health Services, Inc. (“CHS”) was not properly served under O.C.G.A. § 9-11-4 [15]. Since that order was issued on October 17, 2008, Plaintiff has seemingly made no attempt to correct the issue or to properly serve CHS. Based on this inaction, CHS has moved for this court to dismiss Plaintiff’s complaint against “Concentra,” and this motion is unopposed. Although this action is now in federal court, in analyzing Defendant’s motion to dismiss for insufficiency of service of process, the court must examine whether Plaintiff complied with Georgia law governing process. *Usatorres v. Marina Mercante Nicaraguenses, S.A.*, 768 F.2d 1285, 1286 n. 1 (11th

Cir.1985). Under Georgia law, from the time a plaintiff receives notice that service was improper, they are “obligated to exercise, not due diligence, but the greatest possible diligence to ensure proper and timely service.” *Patterson v. Johnson*, 226 Ga. Ct. App. 396 (1997) (internal quotations omitted). Plaintiff has made no attempt to correct the insufficient service of process in almost a year’s time and has not responded to this motion to dismiss. This shows no diligence on behalf of Plaintiff, much less the greatest possible diligence. Therefore, the court GRANTS CHS’s motion to dismiss Plaintiff’s complaint against Concentra.

The Clerk of the Court is DIRECTED to DISMISS the action against Concentra.

**IT IS SO ORDERED** this 16th day of October 2009.

/s J. Owen Forrester  
J. OWEN FORRESTER  
SENIOR UNITED STATES DISTRICT JUDGE